

Assembly Bill No. 1575

CHAPTER 728

An act to amend Section 1550.5 of the Health and Safety Code, and to amend Section 11462.06 of the Welfare and Institutions Code, relating to community care facilities.

[Approved by Governor October 6, 1997. Filed
with Secretary of State October 7, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1575, Committee on Human Services. Community care facilities: foster care.

Existing law provides for the licensure and regulation of community care facilities, as defined, by the State Department of Social Services. Existing law authorizes the department to suspend or revoke the license of a community care facility based on specified grounds, and pursuant to certain administrative hearing procedures. Existing law sets forth procedures under which the Director of Social Services is authorized to temporarily suspend any license prior to any hearing when, in the opinion of the director, the action is necessary to protect residents or clients of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety.

This bill, instead, would authorize the director to temporarily suspend the license under the above circumstances if the action is urgent to protect residents as provided above. The bill would revise the procedures under which the department is authorized to temporarily suspend any license to require the director, when serving the licensee with the temporary suspension, to include designated other evidence and the names of the department's witnesses.

Existing law grants the licensee a right to an interim hearing on an order of temporary license suspension, requires the office of Administrative Hearings, upon setting an interim hearing, to post public notice of the hearing, and specifies that nothing in these provisions precludes a licensee from proceeding directly to a full evidentiary hearing.

This bill would specify that nothing in these provisions precludes a licensee from seeking review of the temporary suspension order by the superior court without first requesting an interim hearing nor requires resolution of the interim hearing prior to review by the superior court. The bill would provide that the relief that may be ordered is a stay of the temporary suspension order. The bill would

also delete the requirement that the office post public notice, as designated.

Under existing law, the interim hearing on the order is limited to the issue of whether the department abused its discretion under these provisions in issuing the order and the evidence at the interim hearing is limited to the department's accusation and order of temporary license suspension.

This bill would delete the above limitations. The bill would require, instead, that the interim hearing provide to the licensee and the department, at a minimum, designated rights. The bill would require the administrative law judge to vacate the temporary suspension upon a finding that there is a reasonable probability that the licensee will prevail in the underlying action and the likelihood of physical or mental abuse, abandonment, or other substantial threat to the health or safety of residents or clients in not sustaining the order does not outweigh the likelihood of injury to the licensee in sustaining the order.

Existing law requires the administrative law judge to issue a verbal interim decision at the conclusion of the interim hearing and issue a written interim decision within one working day following the conclusion of the hearing, limited in scope to sustaining or vacating the order.

This bill would require, instead, the written interim decision within 5 working days following the hearing, delete the above limitation in the scope of the decision, and require that the decision include findings of fact and a conclusion articulating the connection between the evidence produced at the hearing and the decision reached.

Existing law subjects the interim decision to review pursuant to designated provisions of the Code of Civil Procedure and restricts the hearing on the interim decision to the issue of whether the department abused its discretion under these provisions in issuing the order of temporary license suspension.

This bill would delete the above restriction as to the hearing on the interim decision.

Existing law provides that the department is deemed to have abused its discretion in issuing an order of temporary license suspension only if the department's accusation and order of temporary license suspension fail to allege facts and conditions showing that issuance of the order is necessary as described above.

This bill would delete this provision.

Existing law provides for the Aid to Families with Dependent Children-Foster Care (AFDC-FC) program, under which payments are made on behalf of low-income children placed in foster care. For purposes of these provisions, including the setting of group home rates, the reasonable costs of affiliated leases for shelter care for foster children are allowable costs. However, reimbursement of shelter costs is prohibited from exceeding 12% of the fair market value of

owned, leased, or rented buildings, exclusive of idle capacity and capacity used for nongroup home programs and activities.

This bill would provide that the reasonable costs of leases for shelter care for foster children are allowable costs. The bill would authorize the department to adopt emergency regulations to implement the above provisions related to the reimbursement of shelter costs.

Existing law, for purposes of reimbursement of shelter costs under the above provisions, subjects the allowable costs of affiliated leases to a review by the Charitable Trust Section of the Department of Justice.

This bill would provide that allowable costs of affiliated leases shall be permitted to the extent allowed by federal law for federal financial participation.

The people of the State of California do enact as follows:

SECTION 1. Section 1550.5 of the Health and Safety Code is amended to read:

1550.5. The director may temporarily suspend any license prior to any hearing when, in the opinion of the director, the action is urgent to protect residents or clients of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety. The director shall serve the licensee with the temporary suspension order, a copy of available discovery and other relevant evidence in the possession of the department, including, but not limited to, affidavits, declarations, and any other evidence upon which the director relied in issuing the temporary suspension order, the names of the department's witnesses, and the effective date of the temporary suspension and at the same time shall serve the licensee with an accusation.

(a) (1) The department shall notify the licensee, upon service of an order of temporary license suspension, of the licensee's right to an interim hearing on the order. The department shall also provide the licensee with a form and appropriate information for the licensee's use in requesting an interim hearing. The department shall also notify the licensee, upon service, of the licensee's independent right to seek review of the order by the superior court pursuant to Section 1085 of the Code of Civil Procedure.

(2) (A) The licensee may request an interim hearing by mailing or delivering a written request to the Office of Administrative Hearings. The licensee shall mail or deliver the request to the address or location specified on the request form served with the order. The licensee shall mail or deliver the request within five days after service of the order. Upon receipt of a timely request for an interim hearing, the Office of Administrative Hearings shall set a hearing date and time which shall be within 10 working days of the office's receipt of



the request. The Office of Administrative Hearings shall promptly notify the licensee of the date, time, and place of the hearing. The licensee's request for an interim hearing shall not stay the operation of the order.

(B) Nothing in this section precludes a licensee from proceeding directly to a full evidentiary hearing or from seeking review of the temporary suspension order by the superior court without first requesting an interim hearing. Nothing in this section requires resolution of the interim hearing prior to review of the temporary suspension order by the superior court. The relief that may be ordered is a stay of the temporary suspension order.

(3) (A) An interim hearing shall be held before an administrative law judge of the Office of Administrative Hearings. The interim hearing shall be held at the regional office of the Office of Administrative Hearings having jurisdiction over the location of the facility.

(B) For purposes of the interim hearing conducted pursuant to this section, the licensee and department shall, at a minimum, have the following rights:

(i) To be represented by counsel.

(ii) To have a record made of the proceedings, copies of which may be obtained by the licensee upon payment of reasonable charges associated with the record.

(iii) To present written evidence in the form of relevant declarations, affidavits, and documents. No later than five working days prior to the interim hearing, the department and the respondent shall serve the opposing party, by overnight delivery or facsimile transmission, with any additional available pertinent discovery that the department or respondent will present at the hearing and that was not provided to the licensee at the time the temporary suspension order was issued. The additional discovery shall include, but not be limited to, affidavits, declarations, and the names of witnesses who will testify at the full evidentiary hearing. The department and the respondent shall have a continuing obligation to exchange discovery as described in this section, up to and including the day of the interim hearing. There shall be no oral testimony at the interim hearing.

(iv) In lieu of an affidavit by an alleged victim named in the accusation, the department and the respondent shall be permitted, at the discretion of the administrative law judge, to introduce at the interim hearing hearsay evidence as to any statement made by the alleged victim as if the alleged victim executed an affidavit. In deciding whether the hearsay statement should be admitted as evidence in the interim hearing, the administrative law judge shall consider the circumstances that would indicate the trustworthiness of the statement.

(v) To present oral argument.



(C) Consistent with the standards of proof applicable to a preliminary injunction entered under Section 527 of the Code of Civil Procedure, the administrative law judge shall vacate the temporary suspension order where, in the exercise of discretion, the administrative law judge concludes both of the following:

(i) There is a reasonable probability that the licensee will prevail in the underlying action.

(ii) The likelihood of physical or mental abuse, abandonment, or other substantial threat to the health or safety of residents or clients in not sustaining the order does not outweigh the likelihood of injury to the licensee in sustaining the order.

(D) The interim hearing shall be reported or recorded pursuant to subdivision (d) of Section 11512 of the Government Code.

(4) The administrative law judge shall issue a verbal interim decision at the conclusion of the interim hearing which sustains or vacates the order. The administrative law judge shall issue a written interim decision within five working days following the conclusion of the interim hearing. The written interim decision shall include findings of fact and a conclusion articulating the connection between the evidence produced at the hearing and the decision reached.

(5) The interim decision shall be subject to review only pursuant to Section 1094.5 of the Code of Civil Procedure. The department or the licensee may file a petition for that review. A petition for review under Section 1094.5 of the Code of Civil Procedure shall be heard by the court within 10 days of its filing and the court shall issue its judgment on the petition within 10 days of the conclusion of the hearing.

(6) The department may proceed with the accusation as otherwise provided by this section and Section 1551 notwithstanding an interim decision by the administrative law judge that vacates the order of temporary license suspension.

(b) Upon receipt of a notice of defense to the accusation by the licensee, the director shall, within 15 days, set the matter for a full evidentiary hearing, and the hearing shall be held as soon as possible but not later than 30 days after receipt of the notice. The temporary suspension shall remain in effect until the time the hearing is completed and the director has made a final determination on the merits, unless it is earlier vacated by interim decision of the administrative law judge or a superior court judge. However, the temporary suspension shall be deemed vacated if the director fails to make a final determination on the merits within 30 days after the original hearing has been completed.

SEC. 2. Section 11462.06 of the Welfare and Institutions Code is amended to read:

11462.06. (a) For purposes of the administration of this article, including the setting of group home rates, the department shall deem the reasonable costs of leases for shelter care for foster children to be

allowable costs. Reimbursement of shelter costs shall not exceed 12 percent of the fair market value of owned, leased, or rented buildings, including any structures, improvements, edifices, land, grounds, and other similar property that is owned, leased, or rented by the group home and that is used for group home programs and activities, exclusive of idle capacity and capacity used for nongroup home programs and activities. Shelter costs shall be considered reasonable in relation to the fair market value limit as described in subdivision (c). Allowable costs of affiliated leases (1) shall be subject to a review by the Charitable Trust Section of the Department of Justice as specified by Chapter 15 (commencing with Section 999) of Division 1 of Title 11 of the California Code of Regulations and (2) shall be permitted to the extent allowed by federal law for federal financial participation.

(b) Effective July 1, 1998, an approval letter from the Charitable Trust Section of the Department of Justice shall be required for approval of shelter costs that result from self-dealing transactions, as defined in Section 5233 of the Corporations Code.

(c) For purposes of this section, fair market value of leased property shall be determined by either of the following methods, as chosen by the provider:

(1) The market value shown on the last tax bill for the cost reporting period.

(2) The market value determined by an independent appraisal. The appraisal shall be performed by a qualified, professional appraiser who, at a minimum, meets standards for appraisers as specified in Chapter 6.5 (commencing with Section 3500) of Title 10 of the California Code of Regulations. The appraisal shall not be deemed independent if performed under a less-than-arms-length agreement, or if performed by a person or persons employed by, or under contract with, the group home for purposes other than performing appraisals, or by a person having a material interest in any group home which receives foster care payments. If the department believes an appraisal does not meet these standards, the department shall give its reasons in writing to the provider and provide an opportunity for appeal.

(d) (1) The department may adopt emergency regulations in order to implement this section, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) The adoption of emergency regulations pursuant to this section shall be deemed to be an emergency and considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, or general welfare.

(3) Emergency regulations adopted pursuant to this section shall be exempt from the review and approval of the Office of Administrative Law.

(4) The emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations.

